Louisiana Law Review

Volume 19 | Number 1
Legislative Symposium: The 1958 Regular Session
December 1958

Labor Law - The Perennial Preemption Problem

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aware of the intended use of the property, but it did not disclose whether the defendant-vendor knew of the particular zoning ordinance which would have prevented its use. Had the vendor possessed such knowledge, the case would seem to have fallen under the provisions of the Code dealing with fraud,[26] and the contract would have been voidable. Even assuming that the defendant did not know of the ordinance and that both parties were merely in error, the result would be the same,[27] because the error was as to the principal cause. Thus, it would seem that realization of the vendee's belief that the property could be used as intended without the interference of zoning restrictions might be considered a tacit condition to the enforcement of the contract.[28]

In holding that a prospective vendee is not obliged to investigate zoning restrictions except where the appearance of the neighborhood should put him on notice of the possibility of restrictions which would preclude the intended use, the court adopted a realistic and desirable approach. It is often impractical and difficult for a prospective vendee to determine the existence of such ordinances, and, in addition, the vendor, by virtue of his possession and ownership, is more apt to have been informed of their existence.

Maurice J. Naquin

LABOR LAW — THE PERENNIAL PREEMPTION PROBLEM

Plaintiff brought an action for breach of contract in a state court for wrongful expulsion from the defendant union, and asked for restoration of membership and damages for loss of wages and for mental suffering. Defendant conceded the state court jurisdiction to order plaintiff's reinstatement, but contended that the Taft-Hartley Act left the state without power to fill out this remedy by an award of damages for loss of wages and mental suffering. The lower court gave judgment for the plaintiff on both issues. The court of appeals affirmed and the State Supreme Court denied a petition for hearing. On certiorari to the United States Supreme Court, *held,* affirmed. The state

same, for Article 1846, dealing with error of law, specifically provides a means of recovering what has been given or paid under error of law.

26. *See* LA. CIVIL CODE art. 1847(5), (6) (1870).

27. *See id.* art. 1819 *et seq.*

28. *See id.* arts. 1824, 1827.

court has jurisdiction even though the conduct involved was an unfair labor practice, since possible conflict which the state action may have with the federal policy is too remote. *Association of Machinists v. Gonzales,* 42 L.R.R.M. 2135 (U. S. 1958). In another case decided the same day, plaintiff, a non-member of the defendant union and a non-striker, brought an action in a state court to recover compensatory and punitive damages from the union for having maliciously prevented him from engaging in his lawful occupation by unlawful mass picketing in furtherance of a strike. The lower court sustained defendant's objection that the NLRB had jurisdiction to the exclusion of the state court. The State Supreme Court reversed and the lower court, on remand, gave judgment for the plaintiff. The State Supreme Court affirmed. On certiorari to the United States Supreme Court, *held,* affirmed. The state has jurisdiction to award damages to an employee for injuries sustained as a result of a union's tortious conduct notwithstanding the possibility that the conduct in question involved an unfair labor practice. *United Automobile Workers v. Russell,* 42 L.R.R.M. 2142 (U. S. 1958).

The power to regulate commerce is among those powers expressly granted to the federal government by the Constitution.[1] By virtue of its power over interstate commerce, Congress has regulated the field of labor management relations.[2] Under the supremacy clause of the Constitution,[3] federal legislation pursuant to those delegated powers precludes state action where the two conflict or where Congress manifests an intention to preempt the field. Congress is given this grant of superiority primarily because of the necessity for uniformity of regulation in those areas of the law which affect the nation as a whole.[4] An area will require uniformity of regulation when it is national in scope and character.[5] In these areas which are national in scope and character, the states are prohibited to act in the absence of congressional consent notwithstanding a complete absence of federal legislation.[6] However, where the area is local in scope and character, there is less need for uniformity of regulation[7] and

1. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824).
2. NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).
3. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824).
4. Cooley v. Board of Wardens of Port of Philadelphia, 53 U.S. (12 How.) 299 (1851).
5. *Ibid.*
6. Cloverleaf Butter Co. v. Patterson, 315 U.S. 148 (1942).
7. Cooley v. Board of Wardens of Port of Philadelphia, 53 U.S. (12 How.) 299 (1851).

the states can act in the absence of federal legislation.[8] Even though there is existing federal legislation, a state may still act concurrently, provided no conflict results and provided further that Congress has not shown an intent to occupy the field exclusively.[9] The passage of the Labor Management Relations Act was indicative of congressional determination that certain areas within the field of labor relations required uniformity of regulation.[10] Congressional intent reflected by legislation within these areas must be respected even though some matters are left unregulated.[11] The areas preempted by the act are not susceptible of fixed metes and bounds but must be judicially defined in a case by case method.[12] Case law indicates that states may not enjoin union activity which constitutes an unfair labor practice under the act,[13] or enjoin that which is protected by the act.[14] It remains unsettled which activity not specifically covered by the act is to be treated as protected activity.[15] Cases falling within this fringe area are decided on their merits by the Court.[16]

8. *Ibid.*

9. Cloverleaf Butter Co. v. Patterson, 315 U.S. 148 (1942). See also H. P. Hood & Sons Inc. v. DuMond, 336 U.S. 525 (1949).

10. Garner v. Teamsters Union, 346 U.S. 485 (1953).

11. Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957). Appellant sought relief from the NLRB, which declined jurisdiction over the controversy. Relief was then sought and obtained at the hands of the state board. On appeal, the United States Supreme Court reversed on the grounds that the NLRB had exclusive jurisdiction, even though they had in fact declined to exercise it. The case is fully discussed in Comment, 18 LOUISIANA LAW REVIEW 149 (1957). See also Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947), in which the same legal theory was advanced to support the Court's decision that a grant of power to a federal agency, although not exercised, preempts the field.

12. Weber v. Anheuser-Busch, 348 U.S. 468, 480 (1955).

13. Garner v. Teamsters Union, 346 U.S. 485 (1953). The union was charged with violation of the state's "Little Wagner Act" by coercing an employer to coerce his employees to join the union. This rather elaborate charge was made due to the non-existence of any sanctions over union activity at this time. The Court denied jurisdiction to the state, since the alleged grievance was within the NLRB's jurisdiction over unfair labor practices.

14. International Union of United Automobile Workers v. O'Brien, 339 U.S. 454 (1950), wherein it was held that a state prohibition of the right to strike unless certain state procedures were complied with was in conflict with the Taft-Hartley Act which expressly granted such a right to the union. See also Weber v. Anheuser-Busch, 348 U.S. 468 (1955).

15. The Court's expressions on this point have varied. In UAWA v. WERB, 336 U.S. 245 (1949), it was held that a series of unscheduled strikes called without warning for the purpose of harassing the employer was *unprotected* activity under the NLRA and hence *could be regulated by the state.* However, in Garner v. Teamsters Union, 346 U.S. 485 (1953), the Court acknowledged the fact that the failure of the federal law to prohibit certain activity involving economic pressure in support of a union's lawful demands *may imply a conscious intent to remove such activity from all government regulation.*

16. The case of Textile Workers Union of America, CIO v. NLRB, 227 F.2d 409 (D. C. Cir. 1955) dealt with the identical issue raised in the case of Garner v. Teamsters Union, 346 U.S. 485 (1953), note 15 *supra.* The Court of Appeals

It has been held that the states may not take action that fetters rights which are specifically covered by the act,[17] or constitutes a counterpart to its regulatory scheme,[18] or duplicates its remedies.[19] The state may not entertain questions involving certification of bargaining representatives, even though the NLRB declines jurisdiction.[20] The Court has even held that a state must voluntarily refuse jurisdiction over an action for injunctive relief whenever the facts may reasonably be said to bring the controversy within a section of the act.[21] It should be remembered that Congress has given authority to the NLRB to cede jurisdiction to the state boards in some instances.[22] Such a cession has not been made to date.[23] Nevertheless, it cannot be said that the states are completely denied control over all phases of labor relations.[24] The Court has repeatedly stated that Congress had no intention of impairing the state's power over traditionally local matters such as public safety and order.[25] Indeed, it is felt that Congress designedly left open an area for state control in relation to coercive activities or tactics in labor controversies.[26] In view of this, a state has been allowed to act where mass picketing has taken place,[27] or where the union engages in frequent unannounced work stoppages.[28] Generally, a state's exercise of its police power will be sanctioned whenever it is used to punish or prevent violence in connection with labor disputes.[29] Whatever the limitations may be on state jurisdiction to enjoin unfair labor practices, several states have asserted that these limita-

held that the act did not forbid or limit the use of economic pressure in support of lawful demands aside from such specified conduct such as jurisdictional strikes and secondary boycotts. Unfortunately, the writ of certiorari was denied by the United States Supreme Court, so this area of the law remains hazy.

17. Hill v. Florida, 325 U.S. 538 (1945).

18. International Union of United Automobile A. & A.I.E. v. O'Brien, 339 U.S. 454 (1950).

19. Garner v. Teamsters Union, 346 U.S. 485 (1953).

20. Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957).

21. Weber v. Anheuser-Busch, 348 U.S. 468 (1955).

22. 61 STAT. 146, 29 U.S.C. § 160(a) (1947).

23. Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957).

24. International Union, AAWA v. WERB, 336 U.S. 245 (1949); Allen-Bradley Local 1111, United Electrical Workers v. WERB, 315 U.S. 740 (1942).

25. United Automobile Workers v. WERB, 351 U.S. 266 (1956); Allen-Bradley Local 1111, United Electrical Workers v. WERB, 315 U.S. 740, 749 (1942), in which the Court stated that "an intention of Congress to exclude States from exerting their police power must be clearly manifested."

26. International Union, AAWA v. WERB, 336 U.S. 245 (1949); Allen-Bradley Local 1111, United Electrical Workers v. WERB, 315 U.S. 740 (1942).

27. Allen-Bradley Local 1111, United Electrical Workers v. WERB, 315 U.S. 740 (1942).

28. International Union, AAWA v. WERB, 336 U.S. 245 (1949).

29. Garner v. Teamsters Union, 346 U.S. 485 (1953).

tions are inapplicable to a tort action although the conduct upon which it is based may also be an unfair labor practice.[30] The case of *United Constr. Workers v. Laburnum Constr. Co.* was the first Supreme Court expression on the validity of this assertion.[31] There, the defendant union threatened the plaintiff's employees with violence, which resulted in their leaving the job to the detriment of the plaintiff. The state court awarded damages based on a common law tort, although the conduct involved was also an unfair labor practice. The United States Supreme Court affirmed, finding no conflict between the state and federal law because the remedy given by the state court was not provided for in the federal act. Further, the Court held that the state in this case was enforcing a private right, whereas the federal statute dealt with public rights.

The *Russell* case, one of the instant cases, deals with violence in connection with picketing, which resulted in preventing the plaintiff from enjoying his lawful occupation. Disregarding the distinction in the remedies for the moment, the *Laburnum* case and the *Russell* case are comparable in that in both a common law tort was involved, with redress to the state courts possible. The *Gonzales* case, the other case which is the subject of this Note, is also comparable to an earlier Supreme Court decision which held that regulation of union membership matters relative to collective bargaining contracts was not in conflict with the federal act.[32] However, the two instant cases go a step further than their predecessors by expressly holding that the states not only had jurisdiction over the subject matter, but could also award the remedy of back pay in conjunction with tort and breach of contract damages. This is the same type remedy which the NLRB may grant in limited fashion under Section 10(c) of the federal act.[33] According to these two cases, the prohibition against duplication of remedies is inapplicable insofar as back

30. Association of Machinists v. Gonzales, 42 L.R.R.M. 2135 (U.S. 1958); Russell v. UAW, 258 Ala. 615, 64 So.2d 384 (1953); Kuzma v. Millinery Workers Union, 27 N.J. Super. 579, 99 A.2d 833 (App. Div. 1953); Barile v. Fisher, 197 Misc. 493, 94 N.Y.S.2d 346 (Sup. Ct. 1949).

31. 347 U.S. 656 (1954).

32. Algoma Plywood & Veneer Co. v. WERB, 336 U.S. 301 (1949). This case actually allowed a state to award the remedy of back pay, but the opinion did not expressly consider the question of whether such an award of back pay would be a duplication of a remedy afforded by the federal act. Rather, the opinion was concerned with whether or not the state could validly regulate the subject matter involved. Answering this in the affirmative, the remedy of the back pay award was not questioned.

33. 61 STAT. 147 (1947), 29 U.S.C. § 160(c) (1952).

pay is concerned, when the controversy is open to state jurisdiction, at least with reference to injuries sustained as a result of unlawful picketing or unlawful expulsion. There appears to be no good reason to say that allowance of the back pay remedy to the states will not be extended to include all other controversies now open to state jurisdiction in the field of labor relations, providing that damages are appropriate and wages were lost by the complaining party. In support of their decision, the majority of the Court stated that Congress had not intended to preempt the field of damages recoverable from tortious conduct by the provision for back pay awards in the act.[34] It was felt by the majority that the mere possibility of partial relief in the form of back pay at the hands of the federal agency was insufficient justification for refusing an employee the right to recover *all* damages in a state court sustained as a result of tortious conduct, even though this same conduct might be an unfair labor practice.[35] As in the *Laburnum* case, the Court in the two instant cases distinguished those cases which had prohibited state action in conflict with the federal remedy. The Court stated that in those cases it was concerned lest one forum would enjoin, as illegal, conduct which the other forum would find legal, or that state courts would restrict the exercise of rights guaranteed by the federal act.[36] Chief Justice Warren and Justice Douglas dissented in both of the instant cases, basing their objections on the fact that this conduct was an unfair labor practice and hence subject to the exclusive jurisdiction of the NLRB.[37] The dissenting judges also felt that allowance of this form of relief by state action was a duplication of the federal remedy provided for in the act.[38]

34. United Automobile Workers v. Russell, 42 L.R.R.M. 2142, 2146 (U.S. 1958), in which the Court states: "We conclude that an employee's right to recover *all* damages caused him by this kind of tortious conduct cannot be fairly said to be pre-empted without a clearer declaration of congressional policy then we find there." (Emphasis added.)

35. *Id.* at 2145, wherein the Court states: "The power to order affirmative relief under section 10(c) is merely incidental to the primary purpose of Congress to stop and to prevent unfair labor practices. Congress did not intend to establish a general scheme authorizing the Board to award full compensatory damages for injuries caused by wrongful conduct." See also Association of Machinists v. Gonzales, 42 L.R.R.M. 2135, 2137 (U.S. 1958), wherein the court said in part that "the possibility of partial relief from the Board does not, in such a case as is here presented, deprive a party from available state remedies for all damages suffered."

36. United Automobile Workers v. Russell, 42 L.R.R.M. 2142, 2146 (U.S. 1958).

37. Weber v. Anheuser-Busch, 348 U.S. 468 (1955).

38. United Automobile Workers v. Russell, 42 L.R.R.M. 2142, 2148 (U.S.

In the two instant cases, the majority relied heavily on the *Laburnum* decision in allowing the states jurisdiction over conduct which involved unfair labor practices. In the *Laburnum* case, the majority justified its position by distinguishing between private and public rights, a distinction which had previously been discarded as too ambiguous a classification upon which to predicate a principle of constitutional law.[39] Again, the *Laburnum* case differed from prior cases in that state action was held to be permissible even though it affected activity which was clearly an unfair labor practice.[40] In view of these weaknesses in the *Laburnum* decision, it is submitted that the majority reliance upon *Laburnum* in the instant cases was not dictated by considerations of its force as legal precedent or demands of legal reasoning. Rather, the reliance upon *Laburnum* is better explained as a legal rationalization of what the majority viewed as a desirable policy result. The views expressed in the dissenting opinion on duplication of remedies in the two instant cases seem to be in accord with the legislative history of the federal act. Senator Taft recognized the possibility of a situation involving dual remedies but spoke of such only in relation to illegal acts of such a nature that the main remedy would be a criminal prosecution under state law.[41] Nevertheless, the majority felt that earlier declarations of preemption by the act were not controlling in the two instant cases. It seems that the Court, in order to do justice, was obliged to sanction the awards given by the states in the two instant cases, though these awards included back pay which in turn was a duplication in part of an existing federal remedy.[42] It seems that the instant decisions were influenced to a large degree by the inadequacy of the federal relief available at the hands of the NLRB.[43] This inadequacy

1958); Association of Machinists v. Gonzales, 42 L.R.R.M. 2135, 2139 (U.S. 1958).

39. United Constr. Workers v. Laburnum Constr. Co., 347 U.S. 656 (1954).

40. Weber v. Anheuser-Busch, 348 U.S. 468 (1955); Garner v. Teamsters Union, 346 U.S. 485 (1953); Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947). Although these cases are concerned with the validity of state injunctive action, they support the contention made in theory.

41. 93 Cong. Rec. 4437 (1947), where Senator Taft said: "I may say further that one of the arguments has suggested that in case this provision covered violence, it duplicated State law. I wish to point out that the provisions agreed to by the committee covering unfair labor practices on the part of labor unions also might duplicate to some extent that state law. Secondary boycotts, jurisdictional strikes, and so forth, may involve some violation of state law respecting violence which may be *criminal*, and so to some extent the measure may be duplicating the remedy existing under State law. But that in my opinion, is no valid argument." (Emphasis added.)

42. Association of Machinists v. Gonzales, 42 L.R.R.M. 2135, 2139 (1958).

43. See discussion in note 35 *supra*.

of federal relief prompted the court to conclude that Congress did not intend to establish a general scheme authorizing the Board to award full compensatory damages for injuries sustained due to wrongful conduct.[44] Thus, the provision for back pay, being only incidental to the primary purpose of Congress to stop and prevent unfair labor practices, does not preempt recovery in the field of damages for conduct which may be the basis for a tort or breach of contract action.

The two instant cases evidence a balance struck by the Court between the individual's rights and those of the union. The *Laburnum* requisites were met in that Congress had not provided an adequate remedy and state courts are therefore not precluded from exercising jurisdiction.[45] These two cases, combined with the *Laburnum* decision, reflect the Court's change of attitude regarding federal preemption in the field of labor relations by virtue of the Labor Management Act. Earlier decisions invalidated state action only remotely in conflict with the act.[46] Further, the Court had held in the past that the existence of gaps in the remedial legislation was no license for the states to fashion correctives.[47] Undoubtedly, the court was formerly content that Congress, being aware of the injustice which resulted from the invalidation of state action by preemption, could remedy the situation at will. However, Congress remained silent. It is submitted that the Court grew impatient at the inaction of Congress and, in order to prevent further injustice, deviated from its former policy of mechanical application of preemption principles in the field of labor relations.

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MINERAL LAW — PRESCRIPTION OF MINERAL LEASES

Plaintiff sued for cancellation of a mineral lease insofar as it affected his property on the ground of prescription. The defendants had not explored for minerals for a period in excess of ten years. In 1941, plaintiff's vendor granted a mineral lease, covering some 19,000 acres on several non-contiguous tracts for a

44. See discussion in note 35 *supra*.
45. United Constr. Workers v. Laburnum Const. Co., 347 U.S. 656 (1954).
46. Weber v. Anheuser-Busch, 348 U.S. 468 (1955); Garner v. Teamsters Union, 346 U.S. 485 (1953); Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947).
47. Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957).